

JOHN S. DOWNING

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. BYRNE of New York, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H. R. 4269]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4269) for the relief of John S. Downing, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay the sum of \$327.75 to John S. Downing, of Fayetteville, N. C., in full settlement of all claims of the said John S. Downing against the United States for compensation for services performed between March 26 and May 12, 1949, both dates inclusive, as United States Commissioner for the Eastern District of North Carolina.

STATEMENT OF FACTS

The Administrative Office of the United States Courts, in its report, states:

Mr. Downing was a United States Commissioner in the Eastern District of North Carolina, having last served under a reappointment effective March 26, 1945, for a period of 4 years. This reappointment expired at the close of March 25, 1949. On May 6, 1949, we received an account from Mr. Downing claiming fees in the amount of \$467.50 for the quarter ended April 30, 1949. On May 10, 1949, after completing our examination of the account, we wrote to Mr. A. Hand James, clerk of the United States District Court at Raleigh, N. C., asking if Mr. Downing had been reappointed and received a reply from Mr. James stating that the court had entered an order on May 12, 1949, appointing Mr. Downing effective March 26, 1949, and in the same order terminated his services as United States Commissioner for the Eastern District of North Carolina effective May 12, 1949.

Under the rulings of the Comptroller General of the United States we were obliged to disallow in Mr. Downing's account for the quarter ended April 30, 1949, basic fees amounting to \$197 and in a partial account covering the period May 1

to May 12, 1949, basic fees amounting to \$21.50. Accordingly, total basic fees disallowed in the two accounts amounted to \$218.50 and increases amounting to \$109.25 under the provisions of the Federal Employees' Pay Acts of 1945 and 1946 would have been added to the basic fees had the accounts been allowed. Therefore, the sum of \$327.75 as stated in the bill (H. R. 5614) is correct.

Therefore, your committee concurs in the recommendation of the Administrative Office of the United States Courts, and recommends favorable consideration of the bill.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington 13, D. C., July 26, 1949.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

DEAR CONGRESSMAN CELLER: I have received your letter of July 18, 1949, requesting information regarding H. R. 5614, a bill for the relief of John S. Downing of Fayetteville, N. C.

Mr. Downing was a United States Commissioner in the Eastern District of North Carolina, having last served under a reappointment effective March 26, 1945, for a period of 4 years. This reappointment expired at the close of March 25, 1949. On May 6, 1949, we received an account from Mr. Downing claiming fees in the amount of \$467.50 for the quarter ended April 30, 1949. On May 10, 1949, after completing our examination of the account, we wrote to Mr. A. Hand James, clerk of the United States District Court at Raleigh, N. C., asking if Mr. Downing had been reappointed and received a reply from Mr. James stating that the court had entered an order on May 12, 1949, appointing Mr. Downing effective March 26, 1949, and in the same order terminated his services as United States Commissioner for the Eastern District of North Carolina effective May 12, 1949.

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There are enclosed photostats of the vouchers showing the amounts deducted and copies of form letters dated May 23 and May 27, 1949, to Mr. Downing informing him of the action taken with regard to these accounts.

Sincerely yours,

HENRY P. CHANDLER, *Director.*

AFFIDAVIT

FAYETTEVILLE, N. C., July 9, 1949.

This is to certify, that I performed services as United States Commissioner at Fayetteville, N. C., from March 26 to May 12, 1949, after the expiration of my commission, by not being informed that the date expired on March 26, 1949, in the total amount of \$327.75, for which amount I have not received payment.

This July 9, 1949.

J. S. DOWNING.

Sworn to and subscribed before me, a notary public, this July 9, 1949.

[SEAL]

LOUISE ELLIS, *Notary Public.*

My commission expires July 11, 1950.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NORTH CAROLINA,
OFFICE OF THE CLERK,
Raleigh, N. C., June 30, 1949.

Hon. F. ERTEL CARLYLE,
Congress of the United States, House of Representatives,
Washington, D. C.

DEAR MR. CARLYLE: Mr. John S. Downing, former United States Commissioner, Fayetteville, N. C., has requested that I write you in regard to fees due him by the Administrative Office of the United States Courts which were withheld by reason of the fact that his appointment and commission had expired.

Mr. Downing's appointment terminated on March 25, 1949. For some reason he failed to realize that his appointment had expired and continued to act as a United States Commissioner until May 12, 1949. A total amount of fees of \$327.75 was withheld because of this service rendered after March 25. I will be deeply grateful if you will make every effort to secure passage of a private bill authorizing payment of this amount to Mr. Downing.

Let me say that Mr. Downing served for many years and was efficient and capable and did all the work of a resident United States Commissioner in an entirely acceptable manner. It is my opinion that he is justly entitled to receive compensation for this service.

Yours truly,

DON GILLIAM,
United States District Judge.

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY,
EASTERN DISTRICT OF NORTH CAROLINA,
Raleigh, N. C., July 7, 1949.

Hon. F. ERTEL CARLYLE,
Seventh District, North Carolina,
House Office Building, Washington, D. C.

DEAR MR. CARLYLE: I am writing this letter at the request of Mr. John S. Downing, 210 Hull Road, Fayetteville, N. C., formerly United States Commissioner. Mr. Downing has advised me that the Administrative Office of the United States Courts has disallowed his claim for fees for services rendered after the close of business March 25, 1949, to and including May 12, 1949.

Mr. Downing performed his duties as United States Commissioner during the period in question when all of us connected with the United States district court in this district were inadvertent to the fact that Mr. Downing's appointment as Commissioner expired at midnight on March 25, 1949. Since Mr. Downing rendered the services for which he claims fees during this period, and such was recognized by Judge Gilliam when he entered an order on May 12, 1949, making Mr. Downing's appointment as Commissioner retroactive to March 25, 1949, and terminating at midnight May 12, 1949, it is believed that Mr. Downing is entitled to his fees as compensation for services actually rendered by him.

It will be appreciated by this office if you will assist Mr. Downing in receiving the compensation which I feel he has earned and for which he should be paid.

Yours respectfully,

JOHN H. MANNING,
United States Attorney.

UNITED STATES DISTRICT COURT, OFFICE OF THE CLERK,
EASTERN DISTRICT OF NORTH CAROLINA,
Raleigh, N. C., June 30, 1949.

Hon. F. ERTEL CARLYLE,
House of Representatives, Washington, D. C.

DEAR MR. CARLYLE: I am writing you at the request of Mr. J. S. Downing, Fayetteville, N. C.

Mr. Downing has served for many years as United States Commissioner in Fayetteville. For some reason he continued to serve as a Commissioner after the expiration of a 4-year appointment on March 25, 1949. The fact that he was serving without authority was not detected until the filing of his quarterly account for the period ended April 30, 1949. He continued to serve until May

12, 1949, and during that time rendered service for which he would have been paid \$327.75 if his commission had not expired.

I am advised that he cannot receive this compensation except by way of a private bill to be passed by the Congress. It is my hope that you can secure the passage of legislation so that he can be paid.

Mr. Downing has served in a very acceptable manner and I am strongly of the opinion that this claim for fees is a just one and should be paid by the Federal Government.

With kindest regards and best wishes, I am

Cordially yours,

A. HAND JAMES,
Clerk, United States District Court.

Mr. Downing has served in a very acceptable manner and I am strongly of the opinion that this claim for fees is a just one and should be paid by the Federal Government.

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